STATE OF MICHIGAN

COURT OF APPEALS

DARLENE KLEEKAMP,

Plaintiff-Appellee,

v

TENDERCARE MICHIGAN, INC., TENDERCARE CASS CITY, AND DIANE M. EWALD,

Defendants-Appellants,

and

JAN NOWACK,

Defendant.

UNPUBLISHED
November 23, 1999

No. 212758
Huron Circuit Court
LC No. 96-009492 CZ

Before: Cavanagh, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment for plaintiff entered following a jury trial in this action brought under the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq*.; MSA 17.428(1) *et seq*. We affirm.

Plaintiff brought this action after she was discharged from her job as activities director at a nursing facility. Plaintiff alleged that defendants violated MCL 15.362; MSA 17.428(2)[1] by discharging her in retaliation for her attempt to report possible violations of law to state surveyors. Defendants argue that the trial court erred in denying their motion for a directed verdict because plaintiff failed to establish a prima facie case of retaliatory discharge under the WPA. We review the trial court's decision whether to grant a motion for a directed verdict de novo, considering the evidence in the light most favorable to the nonmoving party. *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 634-635; ___ NW2d ___ (1999). A directed verdict is appropriate only where no factual question exists on which reasonable minds could differ. *Id*. at 635. The question whether the evidence

established a prima facie case under the WPA is a question of law that we review de novo. *Phinney v Perlmutter*, 222 Mich App 513, 553; 564 NW2d 532 (1997).

To establish a prima facie case under the WPA, a plaintiff must show (1) that the plaintiff was engaged in a protected activity, (2) that the plaintiff was discharged, and (3) that a causal connection existed between the protected activity and the discharge. *Shallal v Catholic Social Services*, 455 Mich 604, 610; 566 NW2d 571 (1997); *Henry v Detroit*, 234 Mich App 405, 409; 594 NW2d 107 (1999). An employee is engaged in a protected activity when he or she "has reported, or is about to report, a suspected violation of law to a public body." *Shallal*, *supra* at 610. The parties do not dispute that plaintiff was engaged in protected activity by attempting to alert state surveyors to possible violations of law; specifically, failures to report incidents involving a patient's abuse of other patients of the facility. The parties also do not dispute that plaintiff was discharged. Rather, the issue is whether plaintiff sufficiently established a causal connection between the protected activity and her discharge.

Defendants argue that plaintiff failed to establish that defendants had "objective notice" of her reporting or attempted reporting of possible violations of law. Although "objective notice" is not a separate element required to establish a prima facie case, it is relevant to determining whether a causal connection has been demonstrated. *Chandler v Dowell Schlumberger, Inc*, 214 Mich App 111, 117 n 2, 542 NW2d 310 (1996), aff'd 456 Mich 395 (1998). If the employer did not know of the employee's protected activity, then a causal connection would not exist between that activity and the employee's discharge. *Id*. at 117. Therefore, "an employer is entitled to objective notice of a report or a threat to report by the whistleblower." *Kaufman & Payton, PC v Nikkila*, 200 Mich App 250, 257; 503 NW2d 728 (1993).

In this case, we conclude that plaintiff presented evidence raising a factual question whether a causal connection existed between her attempt to report possible violations of law and her discharge. Therefore, the trial court did not err in denying defendants' motion for a directed verdict. Plaintiff testified that defendant Ewald, the facility administrator, interrupted her conversation with the state surveyors and asked her to leave the facility. Another employee testified that Ewald told her that they had to prevent plaintiff from talking to the surveyors, and that Ewald falsely informed plaintiff that she had a telephone call in order to draw her away from the surveyors. Plaintiff left the facility at Ewald's request. When she returned to work after a sick leave, plaintiff was given a letter detailing concerns with her work performance and was notified that she would be discharged in thirty days if no improvement was made. Plaintiff testified that, before she had spoken to the surveyors, she had never been notified that her performance was unsatisfactory—in fact, she had been told that she was doing a great job. This evidence, when viewed in the light most favorable to plaintiff, raised a factual question on which reasonable minds could differ regarding whether a causal connection existed between the protected activity and plaintiff's discharge. Therefore, a directed verdict would have been inappropriate, and the trial court correctly denied defendants' motion.

Defendants also argue that the trial court erred by failing to give their requested jury instruction regarding "objective notice." We review claims of instructional error in a civil trial for an abuse of discretion. *Nabozny v Pioneer State Mutual Ins Co*, 233 Mich App 206, 216-217; 591 NW2d 685 (1998). Where the Standard Jury Instructions do not adequately cover an area, the trial court must, on

request, give supplemental instructions if they properly inform the jury of the applicable law and are supported by the evidence. *Stoddard v Manufacturers Nat'l Bank of Grand Rapids*, 234 Mich App 140, 162; 593 NW2d 630 (1999). We will not reverse the jury verdict for failure to grant a requested supplemental instruction unless failure to do so would be inconsistent with substantial justice. *Nabozny*, *supra* at 217. We find no substantial injustice in letting the verdict stand in this case. The jury was adequately instructed that, to recover, plaintiff must prove that a causal connection existed between the protected activity and her discharge. In order to conclude that plaintiff had proved this causal connection, the jury must have concluded that defendants knew that plaintiff had engaged in protected activity. We find no error in the instructions given or in the trial court's refusal to grant defendants' requested supplemental instruction.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell

[1] MCL 15.362; MSA 17.428(2) provides:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.